Supreme Court, U.S.
FILED

No. 02 1751 MAR 22 2003

OFFICE OF THE CLERK

In The

Supreme Court of the United States

MARIO ARENAS-MORALES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN R. REMIS, JR.
Hawaii State Bar No. 4593
547 Halekauwila Street,
Suite 118
Honolulu, Hawaii 96813
Tel (808) 524-4343

Attorney of Record for Petitioner

EDMUNDO ESPINOZA
California State
Bar No. 64059
Post Office Box 1150
Del Mar, California 92014
Tel (213) 996-8355

Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

22 pp

QUESTION PRESENTED FOR REVIEW

I.

Whether the Ninth Circuit Court of Appeals Erred When It Found That The Crime Of "Hostage Taking" Was Completed "From The Time Petitioner Began To Hold The Aliens In A Manner That Was Not Contemplated In The Alien Smuggling Original Agreement."

LIST OF PARTIES

Ms. Tracy Wilkison & Jason Forge Assistant U.S. Attorneys U.S. Courthouse U.S. Attorney's Office 312 North Spring Street Los Angeles, CA 90012	Counsel for Respondent
Solicitor General of the United States Room 5146, Department of Justice 950 Pennsylvania Avenue N.M. Washington, D.C. 20530-0001	Counsel for Respondent
Brian A. Newman, Esquire 300 Corporate Pointe, Suite 330 Culver City, CA 90230	Counsel for Manuel Gonzalez-Garcia
Marcia J. Brewer, Esquire 300 Corporate Pointe, Suite 950 Culver City, CA 90230	Counsel for Salvador Sierra-Velasquez
Robert Ramsey, Jr., Esquire 800 Wilshire Boulevard, Suite 950 Los Angeles, CA 90017	Counsel for Cresencio Martinez-Avendano
Kenneth M. Miller, Esquire Steward & Miller 34700 Pacific Coast Highway, Suite 205 Capistrano Beach, CA 92624	Counsel for Gonzalo Guerrero-Arana

LIST OF PARTIES – Continued

Richard M. Callahan, Esquire 260 South Lake Avenue, Suite 130 Pasadena, California 91101	Counsel for Carlos Garcia-Serrano
Stephen M. Lathrop, Esquire 900 Wilshire Boulevard, Suite 924 Los Angeles, California 90017-4710	Counsel for Ruben Amezcua-Casas
Manuel Gonzalez-Garcia Victorville Medical FCI Post Office Box 5400 Adelanto, CA 92301	In Pro Per

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
I. Opinion Below	1
II. Jurisdiction	1
III. Constitutional and Statutory Provisions Involved	2
IV. Statement of Facts	2
V. Status of the Case in the District Court	2
VI. The Ruling Below	6
VII. Reasons for Granting the Writ	6
CONCLUSION	8
APPENDIX A	App. 1

TABLE OF AUTHORITIES

Page

CASES

Connally v. General Construction Co., 269 U.S. 385 (1926) 8

United States v. Sierra-Velasquez, 310 F.3d 1217 (9th Cir. 2002) 1

United States v. Salvador Sierra-Velasquez, 310 F.3d 1217 (9th Cir. 2002) 1

STATUTES

18 USC Section 111(a)(1)(b) 3

18 USC Section 371 2

18 USC Section 1203(a) 6

18 USC Section 1254(1) 1, 6

18 USC Section 1302(a) 3

18 USC Section 1324 ..... 3, 6, 7

18 USC Section 3231 1

PETITION FOR WRIT OF CERTIORARI

Petitioner, MARIO ARENAS-MORALES, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on November 22, 2002, in a published opinion under *United States v. Sierra-Velasquez*, 310 F.3d 1217 (9th Cir. 2002).

I.

OPINION BELOW

The opinion of the Ninth Circuit Court of Appeals affirming the District Court was published on November 22, 2002, under *United States v. Salvador Sierra-Velasquez*, 310 F.3d 1217 (9th Cir. 2002), and it is herein attached as Appendix A.

II.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is involked pursuant to Title 28 United States Code Section 1254(1).

The district court had jurisdiction pursuant to Title 18 United States Code Section 3231, as the indictment charged petitioner with offenses under Title 8 and Title 18 of the United States Code. The judgment of the Court of Appeals for the Ninth Circuit was entered on November 22, 2002.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides as follows that *"No person shall be ... deprived of life, liberty, or property without due process of law."*

The statute in question, Title 18 United States Code Section 1203(a), *"Hostage taking"* is unconstitutional as it is void for vagueness as it is applied to the facts of this case.

IV.

STATEMENT OF FACTS

A. Status of the Cases in the District Court.

Petitioner was convicted in two different and separate cases under the same "Hostage Taking" Statute, i.e. *United States v. Mario Arenas-Morales*, Dkt. #01-50155 (CR 00-0877-AHM) and *United States v. Mario Arenas-Morales*, Dkt. #01-50446 (CR 99-1292-GHK).

(1) The First Case.

Petitioner was arrested on December 6, 1999, and was arraigned on a Second Superseding Indictment on February 29, 2002.

The indictment charged petitioner with violation of Title 18 United States Code Section 371, conspiracy to seize and detain illegal aliens, in violation of the "Hostage Taking Act," Title 18 United States Code Section 1203(a); also with violation of Title 8 United States Code Section 1324(a)(1)(A)(v)(1), bringing illegal aliens, harboring them

and concealing them; and with violation of Title 8 United States Code Section 1324 (a)(1)(A)(iii), knowingly shielding the illegal aliens from immigration authorities.

A jury trial was held and petitioner was found guilty on March 23, 2000, of conspiracy to hostage-take, hostage taking, and knowingly shielding the illegal aliens from immigration authorities.

The trial court sentenced petitioner to 420 months (35 years) to the custody of the United States Attorney General.

A timely notice of appeal was filed and the Ninth Circuit Court of Appeals affirmed the district court judgment in an opinion filed on November 22, 2002.

(2) The Second Case.

Petitioner was arrested on December 6, 1999, and a First Superseding Indictment was filed on June 2, 2000.

Petitioner was charged with violation of Title 8 United States Code Section 1324 (a)(1)(A)(v)(1), conspiracy to transport for private financial gain to conceal illegal aliens; also with violation of Title 8 United States Code Section 1324 (a)(1)(A)(ii) and (B)(iii), transporting illegal aliens and causing serious bodily harm to them; also with violation of Title 8 United States Code Section 1324(a)(1)(A)(iii) and (B)(ii), bringing illegal aliens into this country for private financial gain; also with violation of Title 18 United States Code Section 1302(a), "Hostage Taking," and with violation of Title 18 United States Code Section 111(a)(1)(b), using a deadly weapon to assault an immigration agent.

A jury trial was held and on August 31, 2001, petitioner was found guilty of all charges.

The trial court sentenced petitioner to *life imprisonment* to run concurrently to the above mentioned sentence.

A timely notice of appeal was filed and the Ninth Circuit Court of Appeals affirmed the judgment below, in an opinion filed on November 22, 2002.

V.

FACTS OF THE CASE

(1) In the First Case.

The indictment charged that beginning on or about a date unknown and continuing until on or about August 14, 1999, petitioner and his codefendants conspired to knowingly seize and detain illegal aliens, referred in said indictment as "hostages," and to threaten to kill and injure them in order to compel family members to pay money as an explicit and implicit condition for the release of the "hostages."

That petitioner engaged in certain overt acts to accomplish the conspiracy, and that petitioner's acts involved making telephone calls to the "hostages'" family members to demand money for the release of the "hostages." And, that petitioner would do this directly or indirectly through the use of his co-conspirators.

And, furthermore, that one certain conspirator and others, not petitioner, would rape female "hostages."

The allegations were that some co-conspirators would cross the aliens into the United States, some would write

the names of the "hostages'" family members in a notebook including telephone numbers, some guarded the "hostages," and petitioner and others would threaten them with death or physical harm if their families did not pay the "ransom," even to the extent of raping the females to collect the "ransom" demands.

(2) In The Second Case.

Petitioner was charged with being part of an alien smuggling ring which smuggled illegal aliens across the border from Mexico into the United States, and that these aliens were ultimately taken to "drop-houses" in Los Angeles, California.

It was alleged that the ring operated on an unknown date and continued until on or about August 14, 1999.

After the aliens arrived at the "drop-houses" they were concealed in a basement of a residence, kept incommunicado, tightly guarded, physically abused, two women were raped, and were held until their families paid for their release.

Additionally, it was shown that most of the concealed aliens were released after the payment of the previously "agreed-on-fee," but that some were physically abused because their families could not come up with the fee for their release, after demands were made.

The jury, however, entered a special verdict that there had been "no fee-increase," for their release.

VI.

THE RULING BELOW

The ruling of the Ninth Circuit Court of Appeals was ambiguous as it applied to the facts of the cases.

Its ruling concluded that in an alien smuggling case, where there is an already "agreed-on-fee" to cross the aliens into this country, to harbor them and conceal them, and to release them into this country after payment of the fee, that somehow this arrangement turns into a "hostage taking" for "ransom" *"from the time the defendants began to hold the aliens in a manner that was not contemplated in the alien smuggling original agreement."*

In so doing, the Ninth Circuit Court of Appeals essentially merged two separate and distinct statutes, i.e. Title 8 United States Code Section 1324(a)(1)(A)(i), (ii), (B)(1) and (iii), *"alien smuggling,"* and Title 18 United States Code Section 1203(a), *"hostage taking."*

VII.

REASONS FOR GRANTING THE WRIT

As stated above, petitioner argues that the United States Court of Appeals for the Ninth Circuit erred when it ruled that an "average alien smuggling scheme" will turn into a "hostage taking" situation when the smugglers physically harm the agents, while in their harbor, when this harm was not contemplated by the original agreement.

The Section 1203(a) of Title 18 United States Code Section, states in pertinent part as follows:

"(a) . . . whoever . . . seizes or detains and threatens to kill, to injury, or to continue to detain another person in order to compel a third person . . . to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so . . . " shall be guilty of this crime.

The Section 1324 of Title 8 of the United States Code states in pertinent part as follows:

"(1)(A)(i) [any person who] knowing that a person is an alien, brings to . . . the United States in any manner whatsoever, . . . ,

(ii) . . . moves or attempts to transport or move such an alien within the United States . . . ,

(iii) . . . conceals, harbors, or shields from detection . . . , such an alien . . . ,

(B)(i) . . . for the purpose of commercial advantage or private financial gain . . . , [and causing] serious bodily injury . . . ," shall be guilty of this crime.

Basically, both statutes require the same elements such as both require a detention or seizure of the person or alien, both require the continued detention of the person or alien, and both require such continued detention for the purpose of obtaining some financial gain, or other gain.

Here, the Ninth Circuit erred when it ruled that the "alien smuggling" turned into a "hostage taking" just because there were some acts, i.e. physical harm to the aliens while in their custody, because this physical harm was not contemplated in the original agreement between the alien and the smuggler. This interpretation of the statutes is vague.

> *"A statute is void for vagueness when it does not sufficiently identify the conduct to be prohibited. Thus, the Fifth Amendment Due Process Clause requires a statute to be sufficiently clear so as not to cause persons of "common intelligence . . . necessarily [to] guess at its meaning and [to] differ as to its application." Connally v. General Construction Company*, 269 U.S. 385, 391 (1926).

VIII.

CONCLUSION

The Ninth Circuit's interpretation of the aforementioned statutes, and its application to the facts of these cases was erroneous.

THEREFORE, petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Dated: May 27, 2003

Respectfully submitted,

JOHN R. REMIS, JR.
Attorney for Petitioner